

Committee report

Committee	EMPLOYMENT COMMITTEE
Date	3 JUNE 2013
Title	APPOINTMENT OF THE HEAD OF PAID SERVICE (PROPOSED TO BE KNOWN AS “MANAGING DIRECTOR”)
Report of	HEAD OF HUMAN RESOURCES

EXECUTIVE SUMMARY

1. Annual Council at its meeting of 15 May 2013 agreed to defer any decision for the permanent appointment of a Head of Paid Service and to extend the existing acting arrangement approved by Full Council on 20 March 2013 on a fixed term basis. In doing so, Members also wished to consider a change in the status of contractual arrangements for the post-holder of the Strategic Director of Resources post, with whom the additional responsibilities of Head of Paid Service are being performed in the acting capacity. The purpose of this report therefore is to provide Members with a proposal for consideration to enable the existing contract for services to be brought to an end and the entering into of a permanent contract of employment for the Strategic Director of Resources that also takes into account a fixed term appointment until 1 April 2014 for the additional Head of Paid Service duties. These proposals mean that there is no additional cost to the Council, despite the inclusion of the additional responsibilities and as the post holder will forgo any pension scheme entitlement. Members will be required to agree the level of remuneration for the role of Strategic Director of Resources and the additional duties and pay for the Head of Paid Service role pending a full job evaluation review as part of the Council's implementation of a new job evaluation scheme. It is also proposed that the job title for the Head of Paid Service role be changed to “Managing Director” to reflect the nature of the role and assist with the understanding of it.

BACKGROUND

2. The budget for 2013/14, as recommended by Cabinet on 12 February 2013 and set by the Council on 27 February 2013, agreed to the deletion of the Chief Executive post with effect from 31 March 2013. The Local Authority is required to make provision for the statutory role of Head of Paid Service and so it was necessary to determine appropriate arrangements for these responsibilities to continue to be fulfilled. Contained within the budget strategy report to the Council was a recommendation to appoint the Strategic Director of Resources as the Acting Head of Paid Service and Chief Officer with effect from 1 April 2013 and for the Head of Financial Management to be appointed as the Section 151 Officer for the same period until such time as new senior management arrangements are agreed. This recommendation was agreed.

3. The Monitoring Officer in her report to Annual Council on 15 May 2013 requested that the Council consider whether or not they would wish to endorse the decision made by Council on 20 March 2013 and proceed with the arrangements for the appointment of a permanent Head of Paid Service or consider other alternative arrangements. Council agreed to defer any decision until the root and branch service reviews which the new Administration have initiated, have concluded and it is possible to fully set out the proposals for a future senior management structure. In doing so, Council determined that the existing acting arrangements already approved by Full Council should be extended for a further period of time. It is proposed that sufficient time be allowed for the proposed review of services to take place and setting of the budget for 2014/15 and therefore such an extension is proposed until 1 April 2014. Members also requested that further consideration to a change in the contractual status of the current post-holder to that of a contract of employment be given in order to regularise the current arrangement of a contract for services which is due to be concluded on 31 July 2013.

STRATEGIC CONTEXT

4. The senior management structure of the Council needs to continue delivering savings and reflect what is affordable within the current economic climate whilst retaining the highest possible calibre individuals necessary to provide strategic leadership in the delivery of the Council's key priorities. It is also necessary to demonstrate that there is the required capacity to ensure that the Council's statutory duties continue to be met. These proposals therefore contribute to the delivery of all stated corporate priorities.

FINANCIAL BUDGET IMPLICATIONS

5. The Council's Pay Policy approved by Full Council on 20 March 2013 contains the current pay structure and banding for all officers of the Council. For Strategic Directors, there is a four point pay band as follows:

Point 1: £105,168
Point 2: £110,235
Point 3: £118,107
Point 4: £125,982

The overarching grading criteria for roles at this level include the recognition of:

- Responsibility for the formulation of strategic plans which involve uncertainty and which impact across the whole organisation.
- Required advanced theoretical and practical knowledge across a range of work procedures and practices.
- Corporate responsibility for financial resources.
- Responsibility for the strategic leadership and management of a range of disciplines.
- Judgements that involve highly complex facts or situations which require analysis, interpretation and comparison of a range of options.
- Corporate responsibility for major policy development and implementation which impacts across or beyond the organisation.
- Providing and receiving highly complex, sensitive or contentious information where there are significant barriers to acceptance.

To ensure that there is consistency within the comparable Local Government sector and available benchmarking data, that the salary for the Strategic Director of Resources role be set at point 2 of the pay banding, ie £110,235.

6. As the Head of Paid Service is a statutory function with specific responsibilities attached to it, the assessment of value in respect of remuneration must be considered separately to that of any substantive role and functions. Attached as Appendix A are the specific duties as currently set out in the Council's Constitution together with detail of the wider role and functions that accompany this role. As the existing arrangement is being made as a fixed term appointment, then it is necessary to refer to the Council's Acting Up / Secondment Policy for guidance on the appropriate level of additional remuneration. There are three levels of remuneration:

2.5% for short term (up to two months) with one or two additional duties;
 5% for medium term (up to six months) with a number of additional duties;
 7.5% for longer term (more than six months) with a significant number of additional duties.

It is therefore recommended that given the nature of the duties and proposed length of term that it would be appropriate to award a 7.5% of base salary as the uplift, ie an additional £8,268 for a full period of 12 months.

7. To assist with the understanding of the Head of Paid Service function to those external to the organisation and to set out its level of seniority, it is also proposed that the job title for this function be renamed Managing Director.
8. In addition, it is important for Members to consider the comparison of costs between the current contract for services arrangement with that of the proposed contract of employment for the Strategic Director of Resources role and additional duties of Head of Paid Service. This is set out as follows:

Contract for Services	Contract of Employment	Actual Cost for Current Post-holder
Annual contract value £123,500.	Annual salary £110,235	Annual Salary £110,235
	Additional Duties £ 8,268	Additional Duties £ 8,268
	Employers NI £ 14,038	Employers NI £ 14,038
	Superannuation £ 25,984	No pension membership
Current arrangement is for 0.93 FTE making the total equivalent annual contract value £132,085.	Total Cost £158,525	Total Cost £132,541
Tax and national insurance are the liability of the individual contractor in accordance with HMRC regulations.	Includes payment for annual leave, statutory and extra statutory bank holidays and sickness absence in accordance with the Council's terms and conditions.	Comparability with existing working arrangement on a 0.93 FTE basis would equate to a total equivalent annual cost of £123,263. This would therefore mean that there is no additional cost to the Council.
No payment for annual leave or any sickness absence.		

Contractual terms allow for termination by either side at short notice.		
No accrual of employment rights and no other employer liabilities.		

LEGAL IMPLICATIONS

9. Part 1, Section 4 of the Local Government and Housing Act 1989 sets out the duty of the Council to designate an officer as the Head of Paid Service. Under the Council's Constitution this appointment can only be made by Full Council. On 27 February 2013 the Council agreed to the deletion of the post of Chief Executive (which also held the Head of Paid Service function) with effect from 31 March 2013 and the appointment of the Strategic Director of Resources as Acting Head of Paid Service and Chief Officer with effect from 1 April 2013.
10. Section 6 of the same legislation also sets out the requirement to make arrangements for the proper administration of the Local Authority's financial affairs and to ensure that an officer who is appropriately qualified is responsible for the administration of those affairs. This is commonly known as the Section 151 Officer. The statute also dictates that the Section 151 Officer cannot also be the Head of Paid Service. Under the Council's Constitution this appointment also can only be made by Full Council. On 20 March 2013 the Council also agreed that the Head of Financial Management be appointed as Section 151 Officer for the period referred to in paragraph 9 above, after which time it will revert to the Strategic Director of Resources. The Head of Financial Management has agreed for this arrangement to continue until 1 April 2014.
11. The Council's Constitution sets out the officer employment rules which are established as Standing Orders under S135 of the Local Government Act 1972. Section 4, page 151/152 in particular deals with the recruitment of the Head of Paid Service and Chief Officers and the process by which appointments are to be made where they are not to be made exclusively from the complement of existing officers. However, an exclusively internal appointment must still be made on merit. In changing the status from a contract for services arrangement upon termination of the existing contractual term to that of a contract of employment with the same individual, it is not considered necessary to instigate a formal recruitment and selection process. This is on the basis that the appointment of the Director of Resources as an officer of the Council has already been undertaken and confirmed by Employment Committee on previous occasions, the last of which was on 5 September 2011. The post-holder has been subject to a competitive process, together with further market testing in subsequent contract extensions through the operation of the Council's procurement procedures for the awarding of a contract for services, and there is no question about the skills and competence to fulfil the Strategic Director of Resources role and can therefore demonstrate that this appointment is based on merit.
12. Under the terms of reference for the Employment Committee, there is provision for its Members in consultation with the relevant Cabinet Member(s) to take decisions affecting the remuneration and terms and conditions of service of Directors. Members will therefore be required to agree a job title and job description, as well as to determine in accordance with the Council's Pay Policy, approved by Full Council on 20 March 2013, the salary level for the post of Strategic Director of Resources and additional duties of the Head of Paid

Service, (which will be subject to the outcome of the agreed job evaluation process and grading structure when completed).

EQUALITY AND DIVERSITY

13. The Council has a legal duty under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender re-assignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation and marriage and civil partnership. The arrangements proposed in this report do not breach the statutory duty.

OPTIONS

14. The Committee has a number of options:

- Option 1: Agree to put in place a change in contractual status for the Strategic Director of Resources post-holder from that of a contract for services to that of a contract of employment, subject to confirmation in accordance with the Council's Constitution, from Cabinet Members that there is no objection.
- Option 2: Continue with the existing contract for services until its termination date of 31 July 2013 and in accordance with the Council's procurement code enter into a new contract for a further fixed period.
- Option 3: Agree the proposed remuneration package for the post of Strategic Director of Resources.
- Option 4: Defer a decision on the proposed remuneration package for the post of Strategic Director of Resources to allow for consideration of alternative options.
- Option 5: Agree the proposed job description, job title and remuneration for the additional duties of the Head of Paid Service.
- Option 6: Defer a decision on the proposed job description, job title and remuneration for the additional duties of the Head of Paid Service to allow for consideration of alternative options.
- Option 7: Recommend to Full Council that the Strategic Director of Resources continues in the acting capacity of Head of Paid Service until 1 April 2014 together with the Head of Financial Management continuing in the acting capacity as Section 151 Officer for the same period.
- Option 8: Defer any decision on the continuance of the acting arrangements for the Head of Paid Service function and further consider other alternative options.

RISK MANAGEMENT

15. The Council is required to appoint a Head of Paid Service and Council has already approved the arrangements for this to be covered on an acting basis by the Strategic

Director of Resources. This has proven to be a satisfactory arrangement to date and indeed is considered to provide a period of continuity during which time a root and branch review of services can be completed and a future senior management structure determined. This will also allow us to remain compliant with our legal obligations and therefore recommending to Full Council that an extension to the existing arrangement is in the best interests of the Council and minimises any risk of legal challenge.

16. It is equally important that an appropriate level of remuneration is afforded to the additional duties and responsibilities of Head of Paid Service given the intention to extend the period in which these duties are required to be performed. The Council's Acting Up Policy is the source document that determines how any additional duties should be recompensed and sets out clear guidelines within which to establish the appropriate level of remuneration. To determine alternative options would significantly delay the process and potentially be seen as a reason for the current post-holder to turn down an offer of continued office.
17. Members have also indicated that they would prefer to see the substantive role of Strategic Director of Resources filled on a contract of employment basis. This in itself requires an appropriate remuneration package to be determined in accordance with the Council's current pay structure which is set out in the Council's current published Pay Policy. This document sets out a clear agreed pay structure for strategic directors in accordance with the levels of responsibility and to divert from it may put us in breach of our equality duties under the Equality Act 2010 and / or leave the Council open to challenge from other permanent post-holders at this level should the variance be significant.
18. The proposed arrangements as set out in this report provides the Council with the ability to continue to meet its statutory duties, at no additional cost and which retains the current calibre of expertise with a regularised set of contractual arrangements.

EVALUATION

19. Council has already approved the arrangements for the statutory function of the Head of Paid Service to be fulfilled by the Strategic Director of Resources in an acting capacity and for an interim period of time, although any extension to these arrangements will need to be approved by Full Council following a recommendation from Employment Committee. It is proposed that in order to allow sufficient time for a full root and branch review of services to be undertaken and the setting of the budget for the financial year 2014/15 that a fixed term extension to the existing acting arrangement be to 31 March 2014 and for the post of Acting Head of Paid Service to be re-titled Managing Director for the period of appointment in order to recognise the change and seniority of the role.
20. Council also indicated that it would wish to regularise the current contractual arrangements for the post-holder of the Strategic Director of Resources and move from a contract for services to that of a contract of employment. In doing so, it is necessary for Members of the Employment Committee to determine an appropriate level of remuneration for that role in accordance with its terms of reference and in addition to the level of remuneration for the additional duties of the Head of Paid Service function as set out in Appendix A.
21. Members need to consider the proposals presented to them and options for decisions.

RECOMMENDATIONS

22. Option 1: Agree to put in place a change in contractual status for the Strategic Director of Resources post holder from that of a contract for services to that of a contract of employment, subject to confirmation in accordance with the Council's Constitution, from Cabinet Members that there is no objection.
23. Option 3: Agree the proposed remuneration package for the post of Strategic Director of Resources.
24. Option 5: Agree the proposed job description, job title and remuneration for the additional duties of the Head of Paid Service
25. Option 7: Recommend to Full Council that the Strategic Director of Resources continues in the acting Capacity of Head of Paid Service until 1 April 2014 together with the Head of Financial Management continuing in the acting capacity as Section 151 Officer for the same period.

APPENDICES ATTACHED

26. [Appendix A](#): Additional Duties of the Head of Paid Service.

BACKGROUND PAPERS

27. Isle of Wight Council Pay Policy www.iwight.com/documentlibrary/download/pay-policy
28. Isle of Wight Council Acting Up / Secondment Policy
29. Employment Committee 11 March 2013, Paper E – Proposed changes to Chief Officer Structure <http://www.iwight.com/council/committees/Employment%20Committee/11-3-13/Paper%20E.pdf>
30. Employment Committee 13 June 2011, Paper B – Extension of Contract – Director of Resources <http://www.iwight.com/council/committees/Employment%20Committee/13-6-11/PAPER%20B.pdf>
31. Employment Committee 5 September 2011, Paper D – Confidential Report of the Chief Executive – Resources Directorate
32. Full Council 15 May 2013, Paper D – Process for Appointment of Head of Paid Service Role <http://www.iwight.com/Meetings/committees/mod-council/15-5-13/Paper-D.pdf>
33. Full Council - 20 March 2013, Paper B – Proposed Changes to the Chief Officer Structure <http://www.iwight.com/council/committees/mod-council/20-3-13/Paper%20B.pdf>
34. Full Council 27 February 20-13, Paper B, Medium-Term Budget Strategy 2013/14 – 2015/6 and Council Tax Setting 2013/14 <http://www.iwight.com/council/committees/mod-council/20-3-13/Paper%20B.pdf>

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